IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/12/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

C.M.S.A.No.18 of 1999

1.Sankaran
2.Kamala
3.Rajammal
4.Mallika
5.Balu Rajamani Ammal
6.Easwari Ammal .. Appellants

-Vs-

1.Pandyvel
2.Subbu Asari
3.Mookan @ Gurusamy Asari
4.Angammal
5.Parvathy Ammal
6.Raju Naidu
7.Venkataraman
8.Krishnan .. Respondents

PRAYER: Against the judgment and decree dated 23.3.1999 made in C.M. A.No.66 of 1998 on the file of the Principal Subordinate Judge, Madurai, confirming the order and decreetal order in E.A.No.707 of 1995 in E.P.No.307 of 1992 in O.S.No.769 of 1981, dated 26.10.1998 on the file of the Additional District Munsif, Madurai.

!For Appellants : Mrs.J.Anandhavalli

^For Respondents: Mr.K.ramachandran for R1
No appearance
for respondents 2 to 6
Not ready notice
for 7th respondent

:JUDGMENT

The appellants are the third parties to suit O.S.No.769 of 1981 laid by the first respondent herein against the respondents 2 to 8 for delivery of possession. It is not in dispute that the said suit laid by the first respondent was decreed. When the first respondent sought to execute the decree in O.S.No.769 of 1981, in E.P.No.307 of 1992, the appellants herein

obstructed the same under Order 21 Rule 97 of the Code of Civil Procedure on the ground that they have put up buildings in the said suit property, incidentally contending that the right of the first respondent over the suit property had not been concluded in view of the pendency of S.A.No.334 of 1988 on the file of this Court. However, the learned Additional District Munsif, Madurai, taking note of the fact that the appellants herein have no right over the said property dismissed the claim of the appellants herein by order dated 26.10.1998 in E.A.No.707 of 1995, and the same was, on appeal, confirmed by the learned Principal Subordinate Judge, Madurai, by decree and judgment dated 23.3.1999 in C.M.A.No.66 of 1998. Hence, the present civil miscellaneous second appeal.

2. This appeal was admitted on the following substantial questions of law:

(i) Whether the learned Sub-Judge is wrong in law in proceeding to decide the matter finally when the lower Appellate Court is aware of the fact that the entire proceeding is one under Order 21 Rule 97 of the Code of Civil Procedure which mandates that the proceedings has to be tried as a regular suit and in a summary manner?
(ii) Whether the learned Sub-Judge had erred in law in not remitting the matter to the executing Court for affording an opportunity to the parties, particularly to the obstructors/ appellants to substantiate their independent rights claimed by them and thereby proceeding with the matter as a regular suit?

3. It is now reported that the second appeal, viz., S.A.No.334 of 19 88 relied upon by the appellants was also dismissed by this Court by judgment dated 10.7.2001. Therefore, the right claimed by the first respondent under the decree and judgment in O.S.No.769 of 1981 has become final. Under such circumstances, particularly when the appellants failed to establish their rights with regard to the properties while obstructing the execution of the decree and judgment in O.S.No.76 9 of 1981, the question of holding a full-fledged trial in the execution proceedings does not arise.

4. It is settled law that adjudication mentioned under Order 21 Rule 97(2) of the Code of Civil Procedure need not necessarily involve a detailed enquiry or collection of evidence. On the other hand, in an application under Order
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P.D.DINAKARAN,J.
21 Rule 97 of the Code of Civil Procedure, the enquiry must be summary and the proceedings must be disposed of expeditiously bearing in mind its scope and the limited question to be decided.

5. Resultantly, since as the appellants/obstructors have not proved their right with respect to the suit property and the right claimed by the first respondent herein based on the decree in O.S.No.769 of 1 981 has reached a finality by virtue of judgment dated 10.7.2001 in S.A.No.334 of 1988, finding no reason to interfere with the judgments of the Courts below, this

appeal is dismissed answering the substantial questions of law negatively. No costs. Consequently, C.M.P. Nos.7213 and 18461 of 1999 are also dismissed.

Index: Yes

Internet:Yes

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To:

1. The Additional District Munsif
Madurai.

2. The Principal Subordinate Judge
Madurai.